

Attorney Docket T8466250US

#3
Pat
W/D
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11/3/03
PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Examiner:	R. W. Addie
	:		
CRUPI, Frank)	Group Art Unit:	3671
	:		
Application No.: 09/917,824)	Allowed:	
	:		
Filed: 07/31/2001)		
	:		
For: METHOD OF IN-SITU)	June 2, 2003	
REJUVENATION OF ASPHALT)		
PAVEMENT)		

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JUN 10 2003

GROUP 3600

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JUN 04 2003

OFFICE OF PETITIONS

The Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Office of Petitions

PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW NOTICE OF ABANDONMENT

Sir:

Applicant respectfully requests the Commissioner to restore the above-identified abandoned application to pending status on the ground that Applicant properly submitted the required Response to the Official Action Under 37 C.F.R. 1.312, as evidenced by the attached photocopy of the Auto-Reply Facsimile Transmission showing receipt of the Response to the Official Action, dated February 18, 2003.

FACTS

1. An Official Action was mailed on September 18, 2002, defining a shortened statutory deadline for reply of December 18, 2002.

On February 18, 2003, the Applicant filed the following:

- (a) a Transmittal form;
- (b) An Associate Power of Attorney or Agent form;
- (c) a Petition for Extension of Time Under 37 CFR 1.136(a) (in duplicate), requesting an extension to the Response deadline to February 18, 2003; and

(d) a Response to the Official Action.

Copies of each of these documents are attached as Appendix A. The total number of pages of these documents is 11.

2. These documents were transmitted to the United States Patent and Trademark Office by way of facsimile transmission. In this respect, please find attached a copy of the relevant facsimile cover page, containing a Certificate of Facsimile Transmission executed by the undersigned, as Appendix B. The confirmation copy of the facsimile transmission is also attached as Appendix C.

The fax cover page identified the total number of pages being transmitted as being "12", including the cover page. The facsimile confirmation confirms the transmission of said 12 pages.

-
3. As well, on February 18, 2003, an Auto-Reply Facsimile Transmission was received by the undersigned at the facsimile number from which the subject response was transmitted. A copy of the Auto-Reply Facsimile Transmission is attached as Appendix D. Notably, the Auto-Reply Facsimile Transmission confirms the receipt of 12 pages from the fax transmission identified on the "receipt" cover page appearing on the Auto-Reply Facsimile Transmission, which corresponds to the facsimile cover page referred to in paragraph 2.

RELIEF REQUESTED

The Commissioner is respectfully requested to restore the above-identified abandoned application to pending status since the Applicant has properly submitted the Response to the Official Action.

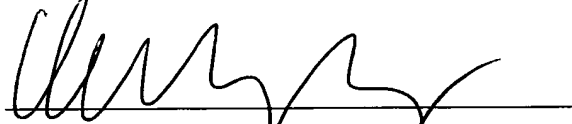
FEE

The Commissioner is hereby authorized to charge Deposit Account No. 07-1750 for any petition fee which may be due. However, since it is believed that the holding of abandonment is the

result of circumstances not attributable to any fault of Applicant or his representatives, it is respectfully suggested that no fee is due.

Applicant's undersigned attorney may be reached in our Toronto office by telephone at 416-862-5795. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Sajewycz', is written over a horizontal line.

Mark Sajewycz, Reg. No. 52,525

Agent for the Applicant

Gowling Lafleur Henderson LLP
Commerce Court West, Suite 4900
Toronto, Ontario M5L 1J3
Canada

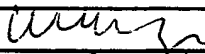
TOR_LAW5377341_1

APPENDIX A

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/917,824
	Filing Date	07/31/2001
	First Named Inventor	Crupi
	Art Unit	3671
	Examiner Name	R.W. Addie
Total Number of Pages in This Submission	Attorney Docket Number	T8466250US

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): response to Office Action Associate Power of Attorney or Agent
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">RECEIVED</div> <div style="text-align: center; margin: 5px 0;">JUN 04 2003</div> <div style="text-align: center; margin: 0 auto;">OFFICE OF PETITIONS</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual	26912 PATENT TRADEMARK OFFICE
Signature	 (Mark Szwed Reg. No. P52,525)
Date	Feb. 18/03

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: _____			
Typed or printed			
Signature		Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

**Associate Power Of Attorney Or Agent (37 CFR 1.34)
(For Representation Related To A Patent Application)**

Docket No.
T8466250US

In Re Application Of:
CRUPI, Frank

Serial No.
09/917,824

Filing Date
07/31/2001

Examiner
R. W. Addie

Group Art Unit
3671

Invention:
METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Please recognize the following as ☐ Associate Attorney ☒ Associate Agent in this application.

Name: **Mark W. Sajewycz**

Reg. No.: **P52,525**

Address: **Gowling Lafleur Henderson LLP
Commerce Court West, Suite 4900
Toronto, Ontario\
M5L 1J3**

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JUN 04 2003

OFFICE OF PETITIONS

Tel. No. **416-862-5795**

 **Reg No. 20,775**
Signature of Principal Attorney or Agent of Record

Dated: **Feb. 18/03**

Registration Number & Address of Principal Attorney or Agent of Record

Registration Number & Address of Principal Attorney or Agent of Record

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Assistant Commissioner for Patents, Washington, D.C.
20231.

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

**PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)
(Small Entity)**

Docket No.
T8466250CA

In Re Application Of:

CRUPI, Frank

Serial No.
09/917,824

Filing Date
07/31/2001

Examiner
R. W. Addie

Group Art Unit
3671

Invention:

METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of **09/18/2002** in the above-identified application.
Date

The requested extension is as follows (check time period desired):

☐ One month ☒ Two months ☐ Three months ☐ Four months ☐ Five months

from: **12/18/2002**
Date

until: **02/18/2003**
Date

A verified statement of small entity status as a small entity under 37 CFR 1.27:

- ☐ is enclosed.
☐ has already been filed in this application.

The fee for the extension of time is **\$205** and is to be paid as follows:

- ☐ A check in the amount of the fee is enclosed.
☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **07-1750**
A duplicate copy of this sheet is enclosed.
☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. **07-1750** A duplicate copy of this sheet is enclosed.

Signature

Mark W. Sajanycz
Reg No. PS2,525

Dated: **Feb. 18/03**

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Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

CC:

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)
(Small Entity)

Docket No.
T8466250CA

In Re Application Of:
CRUPI, Frank

Serial No.
09/917,824

Filing Date
07/31/2001

Examiner
R. W. Addie

Group Art Unit
3671

Invention:
METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of **09/18/2002** in the above-identified application.
Date

The requested extension is as follows (check time period desired):

☐ One month ☒ Two months ☐ Three months ☐ Four months ☐ Five months

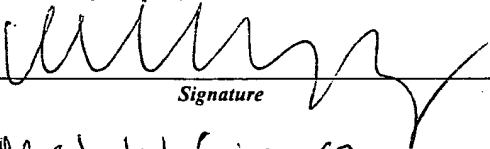
from: **12/18/2002** until: **02/18/2003**
Date *Date*

A verified statement of small entity status as a small entity under 37 CFR 1.27:

- ☐ is enclosed.
☐ has already been filed in this application.

The fee for the extension of time is **\$205** and is to be paid as follows:

- ☐ A check in the amount of the fee is enclosed.
☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **07-1750**
A duplicate copy of this sheet is enclosed.
☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. **07-1750** A duplicate copy of this sheet is enclosed.


Signature

Dated: **Feb. 18/03**

Mark W. Sweeney
Reg No. P52,525

I certify that this document and fee is being deposited on _____ with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

CC:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

File No. T8466250US

February 18, 2003

In re the Application of

Applicant: Crupi
Serial No.: 09/917,824
Filing Date: 07/31/2001
Title: METHOD OF IN-SITU REJUVENATION OF ASPHALT
PAVEMENT
Art Unit: 3671
Examiner: R. W. Addie

Commissioner of Patent & Trademarks
Crystal Plaza 2, Lobby Level
2011 Jefferson Davis Highway
Arlington, Virginia 22202

Dear Sir:

AMENDMENT

Please amend the application as follows:

In the Claims:

Please amend claim 3 by replacing claim 3 with the following Amended Claim. A copy of the Marked-Up Claim is attached for the Examiner's convenient reference.

Amended Claim

3. (Amended) The method as claimed in claim 2, wherein, during step (e), the backhoe apparatus moves laterally relative to the asphalt paved surface connecting the blended intermediate to the entrance to the pick-up conveyor.

REMARKS

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1 to 17 are pending in the application.

Claims 1, 16, and 17 are independent.

Claim 3 has been amended for purposes of consistency with claim 1, from which claim 3 depends.

CLAIMS REJECTIONS

1. Claims Rejections Under 35 USC § 112

Claims 3 to 8 have been rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant refers to as the invention. In particular, with respect to claim 3, the Examiner has objected to the limitation introduced with respect to Step (d) in claim 1. In response, the Applicant submits that claim 3 has been amended such that the subject limitation pertains to Step (e) and not Step (d). As such, the Applicant submits that claim 3 is sufficiently definite.

Claim 4 has been also rejected under 35 USC § 112, second paragraph, for failing to specifically recite an actual method step. In particular, the Examiner has objected to the fact that the limitation has been introduced with respect to the “backhoe apparatus” recited in claim 1. In response, the Applicant submits that there is no basis for such a rejection. Claim 1 specifically recites, in Step (e), “moving the blended intermediate from proximate the obstruction to an entrance of the pick-up conveyor with the backhoe apparatus.” As such, it is clear that the “backhoe apparatus” is an element of the invention as claimed in claim 1. Claim 4 merely introduces a limitation with respect to an element specifically recited in claim 1. As such, the Applicant submits that claim 4 is a proper limitation with respect to an element specifically recited in claim 1 for performing “the moving” action recited in Step (e).

With respect to claims 5 to 8, because claims 5 to 8 are directly or indirectly dependent on claims 3 or 4, the Applicant further submits that claims 5 to 8 are sufficiently definite, and therefore, comply with 35 USC § 112, second paragraph.

2. Claims Rejections Under 35 USC § 103

The Examiner has rejected claims 1 to 17 under 35 USC § 103 (a) as being unpatentable over Cutler, in view of Smith et al. and Strunk. In particular, the Examiner appears to be of the view that Strunk teaches a roadway construction apparatus comprising a pick-up conveyor (20) having a backhoe apparatus (34) for feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway, and that such teaching, in combination with the teachings in Cutler and Smith et al, render the claimed invention unpatentable.

In response, the Applicant submits that claims 1 to 17 are patentable over the cited references. In particular, the Applicant submits that the combination of Cutler, Smith et al., and Strunk do not result in the combination of elements comprising the claimed invention in claim 1.

Claims 1 to 15

Claim 1 covers a method of effecting in-situ rejuvenation of an asphalt paved surface with an asphalt rejuvenating apparatus including a pick-up conveyor and a backhoe apparatus, wherein the asphalt paved surface includes an obstruction disposed therein, comprising the steps of:

- (a) heating the asphalt paved surface to form heated asphalt;
- (b) scarifying the heated asphalt to form a scarified intermediate
- (c) milling the scarified intermediate to form a milled intermediate;
- (d) blending rejuvenating fluid with the milled intermediate to form a blended intermediate, wherein a portion of the blended intermediate is deposited proximate the obstruction; and

- (e) moving the blended intermediate from proximate the obstruction to an entrance of the pick-up conveyor with the backhoe apparatus.

The Applicant submits that Strunk does not teach a person of ordinary skill in the art to use a backhoe apparatus (34) to feed roadway construction materials into a pick-up conveyor for recycling into the prepared roadway.

In this respect, the Applicant submits that Strunk's backhoe apparatus is not intended to effect removal of existing roadway construction material for subsequent recycling into a prepared roadway. Rather, Strunk's backhoe apparatus is intended for removal of non-roadway construction materials, such as earth and vegetation, to create the necessary space for roadway construction. Strunk's backhoe apparatus (34) is described in Strunk at column 4, lines 33 to 35, as being "used to remove overburden not accessible to scoop 20." The use of Strunk's backhoe in removing non-roadway construction materials is further reinforced at column 4, lines 55 to 61:

"Bucket assembly 34 can be used to excavate an overlying area to the side of the apparatus as, for instance, when profiling a hillside and to take the material removed and place it into the scoop 20. Similarly, bucket assembly 34 can be used to excavate a trench below the level of the apparatus and to lift the material into the scoop 20.

The Applicant submits that none of the material excavated by the backhoe assembly is of a roadway construction material quality. This is apparent in Strunk at column 9 between lines 1 - 9:

"Organic material such as tree stumps is not desirable in a road bed underlayment. Usually all stumps and other organic material are removed before road work begins. The present apparatus can remove small stumps and logs with the articulated bucket assembly. The bucket assembly and the scoop in conjunction with one another can uproot small stumps and the bucket assembly can lift these stumps out of the path of the present apparatus."

Rather than using the excavated material for purposes of road construction, material excavated by Strunk's backhoe apparatus is intended for disposal. Disposal is specifically contemplated in Strunk at column at lines 62 to 68:

"The apparatus may also function as a front-end loader. In this operating mode, the conveyor is stopped. Overburden, rock or unwanted material is collected in the scoop. The scoop is raised

and the vehicle is moved to the location where the unwanted material is to be deposited. The scoop is rotated so that the cutting edge is lowered, thus depositing the material.”

Notably, Strunk’s backhoe apparatus is, at no time, relied upon for “feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway”. Rather, roadway construction materials are scarified and collected by Strunk’s scoop for subsequent processing and, ultimately, recycling. Recycling of existing asphalt road surfaces into a prepared roadway in this manner is specifically described in Strunk at column 9, lines 10 to 22:

“Another especially beneficial use of the present apparatus is in renewing asphaltic road surfaces. Generally, the old road surface must be broken up and hauled away. This necessitates laying a new base for the new pavement. Because the rock crusher is adjustable on its output side for size, it may be set to produce crushed old asphalt pavement fine enough for the new base. Chipper, breaker-type teeth are mounted on the leading edge of the scoop. The scoop simultaneously rips and breaks up the old road surface into pieces small enough to be conveyed to the rock crusher. The rock crusher reduces the size of the old pavement small enough to be used as underlayment for the new road surface.”

Because Strunk’s backhoe apparatus is not provided for “feeding roadway construction material into the pick-up conveyor for recycling into the prepared roadway”, the Applicant submits that Strunk’s backhoe combined with the teachings of Cutler, and Smith et al., does not disclose all of the elements of the invention as claimed in claim 1. As such, the Applicant submits that the invention as claimed in claim 1 is patentable over the cited references.

With respect to claims 2 to 15, claims 2 to 15 are directly or indirectly dependant on claim 1. As such, and relying on the foregoing reasons, the Applicant submits that claims 2 to 15 are patentable over the cited references.

Claims 16 and 17

With respect to claim 16, claim 16 claims, *inter alia*, the step of “... moving the milled intermediate from proximate the obstruction to an entrance to the pick-up conveyor with the backhoe apparatus.”

With respect to claim 17, claim 17 claims, *inter alia*, the step of "... moving the first intermediate from proximate the obstruction to an entrance to the pick-up conveyor with the backhoe apparatus."

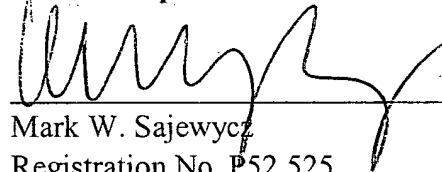
The Applicant submits that Strunk does not contemplate using his backhoe apparatus for the purpose of feeding roadway construction to a pick-up conveyor. As such, and relying on the foregoing reasons with respect to claim 1, the Applicant submits that claims 16 and 17 are patentable over the cited references.

The Commissioner is hereby authorized to charge any fees, including fees for the additional claims, which may be required to Deposit Account No. 07-1750.

Favourable consideration is earnestly solicited and, if any issues remain outstanding, the Examiner is invited to telephone the undersigned agent for the applicant at 416-862-5795.

Respectfully submitted

Frank Crupi



Mark W. Sajewycz
Registration No. P52,525

GOWLING LAFLEUR HENDERSON LLP
Commerce Court West, Suite 4900
Toronto, Ontario
M5L 1J3

MWS:pg
TOR_LAW5275710_1
February 18, 2003

MARKED-UP CLAIM

3. The method as claimed in claim 2, wherein, during step (e) [(d)], the backhoe apparatus moves laterally relative to the asphalt paved surface connecting the blended intermediate to the entrance to the pick-up conveyor.

APPENDIX B

GOWLINGS

Incorporating the practice of SMITH LYONS

Suite 4900
Commerce Court West
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Canada M5L 1J3
Telephone (416) 862-7525
Facsimile (416) 862-7661
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Mark Sajewycz
Direct (416) 862-5795
mark.sajewycz@gowlings.com

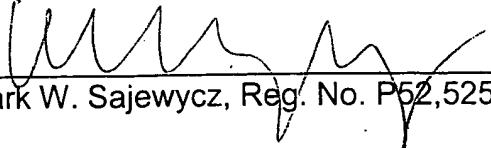
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To R. W. Addie
Company United States Patent and Trademark Office
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Fax Number 703-305-8623
Phone Number
From M. Sajewycz
Date Feb. 18/03
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Total Pages 12 (including cover)
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Date: February 18, 2003

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APPENDIX C

 *** TX REPORT ***

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GOWLINGS

Incorporating the practice of SMITH LYONS

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Facsimile *RUSH*

To R. W. Addie
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 Date Feb. 18/03
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 Total Pages 12 (including cover)
 File Number T8466250US
 Staff Code 1616

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CERTIFICATE OF FACSIMILE TRANSMISSION

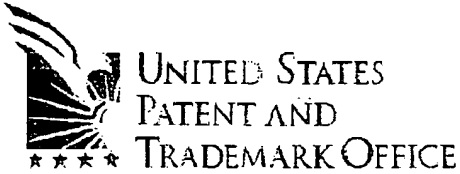
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11 1 1 1 1

APPENDIX D

TO:Auto-reply fax to 4168627661 COMPANY:

Auto-Reply Facsimile Transmission



TO: Fax Sender at 4168627661

Fax Information
Date Received: 2/18/03 4:30:57 PM [Eastern Standard Time]
Total Pages: 12 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page

=====>

02/18/03 16:30 FAX 4168627661		GOWLINGS		001/012	
Gowling Lafleur Henderson LLP Barristers & Solicitors Patent & Trade Mark Agents					
<p>Incorporating the practice of SMITH LYONS</p>			<p>Suite 4900 Commerce Court West Toronto, Ontario Canada M5L 1J3 Telephone (416) 862-7525 Facsimile (416) 862-7661 www.gowlings.com</p> <p>Mark Sajewycz Direct (416) 862-5795 mark.sajewycz@gowlings.com</p>		
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Company United States Patent and Trademark					
Office					
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Date Feb. 18/03					
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<p>Mark W. Sajewycz, Reg. No. P52,525</p>				Date: February 18, 2003	
<p>If there is a problem with transmission or all pages are not received, please call Pam D. Griewe at (416) 862-7525 extension 4458 for retransmission. This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (call us collect), and return the original to us by postal service at the address noted above. Thank you.</p>					
<p>Montreal Ottawa Toronto Hamilton Waterloo Region Calgary Vancouver Moscow</p>					
Received from <4168627661> at 2/18/03 4:30:57 PM [Eastern Standard Time]					

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